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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LA OPEN DOOR  
PRESBYTERIAN CHURCH,

Plaintiff and Appellant,

v.

DANA PARK,

Defendant and  
Respondent.

B284930

(Los Angeles County  
Super. Ct. No. BC586750)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rita Miller, Judge. Affirmed.

Law Offices of Mary Lee, Mary Lee; Esner, Chang & Boyer, Andrew N. Chang, and Joseph S. Persoff for Plaintiff and Appellant.

Leo Fasen for Defendant and Respondent.

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Plaintiff LA Open Door Presbyterian Church (LAODC) appeals from a judgment entered in favor of defendant Dana Park dba Park Wilshire Realty, Inc. (Park) after a court trial. LAODC contends (1) the evidence presented at trial compelled a judgment in its favor, and (2) the trial court erred in admitting one of Park's trial exhibits. As explained below, LAODC asks this court to reweigh evidence and reevaluate the credibility of witnesses, tasks an appellate court may not undertake. We affirm the judgment.

### **BACKGROUND**

In July 2015, LAODC filed this action against Park, asserting causes of action for conversion of funds, money had and received, and breach of fiduciary duty.

In the complaint, LAODC alleged: It defaulted on a loan for construction on church property, and Evangelical Christian Credit Union (ECCU), the holder of the loan, purchased the property at a public auction. ECCU filed an unlawful detainer action against LAODC. Park, who owned a realty company, informed LAODC she had a close relationship with ECCU's president and could help LAODC remain in the property. Park "represented to LAODC that if LAODC entrusted [her] with the sum of four hundred fifty thousand dollars (\$450,000) she and her investors would use that money as a portion of [a] down payment to purchase the Property from ECCU and that after purchasing ECCU's interest in the Property, LAODC would retain possession of the Property, as well as a partial ownership interest in the Property." LAODC gave Park \$450,000, but she did not use the funds as a down payment, and her investors did not purchase the property. LAODC was evicted, and ECCU sold

the property to another church. LAODC demanded return of the \$450,000, but Park refused.

Park, who was the first witness to testify at the court trial,<sup>1</sup> gave an account of events very different from the allegations in LAODC's complaint. She acknowledged Pastor Hung Sung Park (Pastor)<sup>2</sup> of LAODC gave her two checks, totaling \$450,000. She also acknowledged she assisted LAODC in its attempts to remain in the property by securing investors who agreed to purchase the property for more than \$25 million and then lease it back to LAODC.<sup>3</sup> But she denied Pastor gave her the \$450,000 to use as a down payment on the property. Instead, she claimed Pastor gave her the money so she could (1) pay attorneys representing LAODC in numerous lawsuits, and (2) pay off unidentified individuals who were writing defamatory articles about Pastor, all without the church congregation knowing about the payments or the fact the church was in danger of losing the property. In return, according to Park, Pastor agreed to help her family by writing a letter on their behalf to a church organization, regarding a dispute between Park's brother and another church. Pastor did not wind up writing the letter because Park was unable to save LAODC from eviction, and the relationship soured.

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<sup>1</sup> She testified as a hostile witness in LAODC's case and on her own behalf in her defense case.

<sup>2</sup> Throughout this opinion, we refer to Hung Sung Park as "Pastor," so as not to confuse him with defendant Dana Park, who we refer to as "Park."

<sup>3</sup> Park was a licensed real estate sales person, doing business as Park Wilshire Realty.

During its examination of Park, LAODC questioned her about her bank records, showing the expenditures she made from her account after she received the \$450,000. LAODC sought to show Park did not pay \$450,000 in expenditures on behalf of the church and Pastor. Park testified she made most of the payments to the attorneys representing LAODC in cash she had on hand in her business, and not with checks from her bank account. She claimed she paid out more than \$450,000 on behalf of the church and Pastor. Park introduced, and the trial court admitted into evidence, a 2012 1099 Internal Revenue Service (IRS) form, indicating her business (Park Wilshire Realty, Inc.) paid \$327,250 to a law group that represented LAODC.<sup>4</sup> She also testified about payments she made to other attorneys who represented LAODC in the numerous lawsuits in which it was involved. Park conceded she had her own legal troubles during this same time period and paid the attorneys who were representing LAODC for her own defense. She maintained, however, that she spent more than the \$450,000 she received from Pastor to make payments on behalf of him and LAODC.

Pastor testified that Park asked him to give her all the money LAODC had, and she told him she would place the money in a trust account to be used as a down payment for the purchase of the church property. He conceded LAODC did not have any documents memorializing the alleged arrangement with Park, and LAODC did not present at trial any documents showing the church's board of directors approved a \$450,000 expenditure for a

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<sup>4</sup> LAODC objected to this document at trial and contends on appeal that the trial court erred in admitting it, as discussed below.

down payment on the property. He denied asking Park to use the money to pay attorneys or to pay off individuals who were defaming him. He also disputed LAODC incurred legal expenses equivalent to the amount Park claimed she paid on behalf of LAODC. He also testified about some checks LAODC wrote to pay for its own legal expenses.

During closing argument, LAODC conceded the evidence supporting its allegation that Pastor gave Park \$450,000 to be used as a down payment on the property was “his word [Pastor] against hers [Park]” because LAODC had no documents supporting the allegation. LAODC’s counsel informed the trial court that this case came down to credibility: “Who is more believable and who is more credible,” Pastor or Park?

The trial court issued a three-page statement of decision, overruling LAODC’s objections to the proposed statement of decision. Regarding LAODC’s evidence, the trial court stated, in pertinent part: “There were no witnesses to what the Pastor told Park to do with the money. There was no writing that stated what the purpose of the \$450,000 payment was. There was no written resolution of the governing body of Church saying that the \$450,000 was an authorized payment toward the purchase of the land or anything else. There does not appear to have been any formal gathering of church leaders to authorize a \$450,000 contribution to the purchase of the land or anything else. The Pastor simply had the person with check-writing authority write \$450,000 in checks to Park’s company on Church’s bank account. There was no written agreement or draft agreement between Church and any investor. Nor was there any such correspondence about the \$450,000 or any investment of that

amount. Most of the Pastor's testimony was uncorroborated and the portion that was corroborated did not address the key issues."

Regarding the defense case, the trial court stated, in pertinent part: "Park pointed out that, although there were very large legal bills being run up in the foreclosure, unlawful detainer, and contempt actions, Church could not show that it had paid these large sums. However, the attorneys for Church had kept on working. From this, Park proposed that the court infer that the attorneys were being paid and [that] Park was making those payments on behalf of Church and the Pastor and others affiliated with Church. [¶] Park adduced evidence that she made payments of \$327,250 to one of the attorneys representing Church. This would have exhausted the majority of the \$450,000. She adduced evidence that she made other payments to attorneys who were then representing Church in the foreclosure, the unlawful detainer and the contempt proceeding."

The trial court concluded: "Plaintiff [LAODC] had the burden of proof by a preponderance of the evidence. Plaintiff did not persuade the court by a preponderance of the evidence. The court was unable to conclude that the Pastor and Church's version of events was the true version. It appeared at least as likely that Park's account was true. The court was unable to conclude that Park misused the funds entrusted to her. The court cannot conclude that Park did not pay that amount or additional amounts totaling \$450,000 for the purposes it was entrusted to her."

The trial court entered judgment in favor of Park.

### **DISCUSSION**

LAODC contends (1) the evidence presented at trial compelled a judgment in its favor, and (2) the trial court erred in

admitting the 1099 IRS form, showing payments from Park's company to an attorney who represented LAODC in numerous actions.

**I. LAODC Has Not Shown the Evidence Compels a Finding in Its Favor on the Complaint as a Matter of Law**

“We generally apply the familiar substantial evidence test when the sufficiency of the evidence is at issue on appeal. Under this test, “‘we are bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party [citations] and in support of the judgment. . . . “In brief, the appellate court ordinarily looks only at the evidence supporting the successful party, and disregards the contrary showing.” [Citation.] All conflicts, therefore, must be resolved in favor of the respondent.’” [Citation.] [¶] ‘But this test is typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence.’” (*Sonic Mfg. Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465, italics omitted.)

As LAODC acknowledges, where, as here, “the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. . . . [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a

finding.” ’ ’ ” (*Dreyer’s Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838; accord *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 769.)

Pastor testified to LAODC’s version of events, and Park testified to hers. LAODC did not present any documents indicating the purpose for which it gave Park the \$450,000. After hearing the testimony and judging the credibility of the witnesses, the trial court concluded it was “at least as likely that Park’s account was true,” and therefore LAODC did not prove its case by a preponderance of the evidence. We have no cause to disturb the judgment in favor of Park because the evidence does not compel a finding in favor of LAODC as a matter of law.

LAODC argues the matter must be remanded for an accounting. In support of this argument, it summarizes Park’s bank records and asserts she did not pay \$450,000 out of her bank account for expenditures for Pastor and LAODC. This ignores Park’s testimony that she paid most of LAODC’s legal expenses with cash from her business, and that she actually paid out more than \$450,000 on behalf of Pastor and LAODC.

LAODC challenges the sufficiency of the documentary support for Park’s testimony. Park is not the party with the burden of proof, and we need not evaluate the weight of the evidence she presented. It is enough that her testimony contradicted LAODC’s evidence, and we cannot conclude that LAODC’s evidence defeated hers and compelled a finding in its favor as a matter of law.

## **II. Admission of 1099 IRS Form**

LAODC contends the trial court erred in admitting the 1099 form, showing payments from Park’s company to an attorney who represented LAODC in numerous actions.



At trial, Park introduced the 1099 form, testifying that she paid her accountant to prepare the document. LAODC objected to admission of the form on the ground of lack of foundation, arguing: “We don’t know who prepared this. There is no backup documents which we can examine if this document is true and accurate . . . .” The trial court asked Park if she remembered seeing the document, if she remembered mailing it out, and if the document was a true copy of what she mailed to the IRS. Park responded affirmatively to each of these questions, and the court admitted the document over LAODC’s objection.

During cross-examination by LAODC’s counsel in the defense case, Park testified she informed her accountant of her company’s payments to the law group, and her accountant prepared the 1099 form on her behalf.

Assuming the 1099 form was not properly authenticated at the time the trial court admitted it, it was certainly authenticated by Park’s later testimony that her accountant prepared the form at her request with information she provided. (Evid. Code, § 1400 [“Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law”].)

On appeal, LAODC challenges admission of the document on a ground it did not raise below—that the document was hearsay and the business records exception (Evid. Code, § 1271)<sup>5</sup>

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<sup>5</sup> Evidence Code section 1271 provides: “Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: [¶] (a) The writing was made in the

did not apply. Even if LAODC preserved this challenge for review, it is without merit. Park's testimony established the 1099 form was a document made in the regular course of business, at her request, after the end of 2012, with information she provided to her accountant.

Based on the foregoing, the trial court did not err in admitting the 1099 form.

### **DISPOSITION**

The judgment is affirmed. Respondent is entitled to recover costs on appeal.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.\*

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regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; [¶] (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.”

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.